

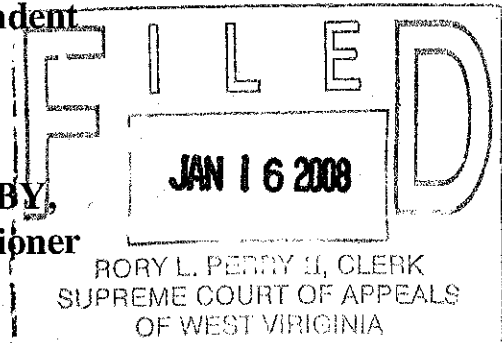
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 33661

DAWN VALERIE (SOULSBY) MARTINEZ,
Petitioner Below, Respondent

vs.

DAVID LEON SOULSBY,
Respondent Below, Petitioner



Hon. O.C. Spaulding, Judge
Circuit Court of Putnam County
Civil Action No. 00-D-402

BRIEF OF THE APPELLEE

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I. INTRODUCTION

This is the brief by the Appellee, Dawn Valerie (Soulsby) Martinez [Ms. Martinez], in an appeal by the Appellant, David Leon Soulsby, M.D. [Dr. Soulsby], from an order of the Circuit Court of Putnam County entered on January 16, 2007, affirming orders entered by the Family Court of Putnam County on November 8 and 11, 2006. The appeal challenges the manner in which the Family Judge calculated Dr. Soulsby's child support obligation, but Ms. Martinez submits that such calculation should be affirmed.

At issue in this case is whether this Court is going to interpret the child support statutes consistent with their purpose, i.e., providing adequate financial support for children, or whether it is going to interpret such statutes in order to minimize child support paid by non-custodial obligors.

Where two children are involved, one who spends no time with the non-custodial parent, and one who spends more than thirty-five percent of the time with the non-custodial parent, the Family Judge correctly applied the formulas enacted by the Legislature that applies to each child. What the Dr. Soulsby seeks is to have this Court direct the Family Judge to apply his own "averaging" formula, not enacted by the Legislature, under the rationale that the child support statutes were intended to afford him a "multi-child discount."

Ms. Martinez submits, however, that this is not only inappropriate for her children, but for all West Virginia children in similar circumstances. If the goal of the child support statutes is to minimize a non-custodial parent's child support obligations, then Dr. Soulsby

should prevail. On the other hand, if goal of the child support statute is to provide adequate and appropriate support for children in relationship to their parents' circumstances, Ms. Martinez and her children should prevail.

II. STATEMENT OF FACTS

On June 23, 2006, the parties appeared before the Family Judge for purposes of a hearing on various contempt and child custody modification matters.¹

On November 9, 2006, an order was entered as a result of that hearing dealing with custody for parties two children, Kari and Devin.² The Family Judge held that, "Kari is of an age to nominate her guardian and chooses to reside with her Mother."³ The Court also provided for Devin's primary custody with Ms. Martinez, but provided liberal visitation for Dr. Soulsby.⁴ Neither party has appealed the issues of custody and visitation.

On August 8, 2006, an order was also entered as a result of the hearing on June 23, 2006, regarding child support.⁵ The Family Judge found that Dr. Soulsby's average monthly income for 2004 and 2005 was approximately \$35,000.00.⁶ The Family Judge

¹Ex. A.

²*Id.* at 4.

³*Id.*

⁴*Id.* at 4-5.

⁵Ex. B.

⁶*Id.* at 1.

acknowledged that Ms. Martinez is not employed, but attributed monthly income to her in the amount of \$6,250.00 based upon the parties' property settlement agreement.⁷ The Family Judge correctly noted that Ms. Martinez has custody of Kari one hundred percent of the time and custody of Devin about sixty-three percent of the time.⁸ These percentages have remained the same throughout this appeal.

With respect to Devin, the Family Judge used the "Extended Shared Parenting Worksheet."⁹ With respect to Kari, even though she spends no time with Dr. Soulsby, the Family Judge used the "Basic Shared Parenting Worksheet."¹⁰ The Family Judge then used the figures generated from these worksheets to order monthly child support of \$5,570.00. *Id.* The order provided that Dr. Soulsby had thirty days to file an appeal.¹¹

Instead of filing an appeal from the Family Judge's order, as provided therein, Dr. Soulsby filed a motion for reconsideration.¹² Dr. Soulsby argued for an application of the worksheets in a manner not expressly permitted by law, i.e., that one worksheet should have been prepared as if Ms. Martinez had sole custody of both children with no visitation

⁷*Id.*

⁸*Id.* Thus, Dr. Soulsby barely meets the thirty-five percent threshold for use of the "extended shared parenting worksheet."

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²Ex. C.

and another worksheet should have been prepared as if Ms. Martinez had custody of both children with extended shared parenting, then the two worksheets be combined and averaged.¹³

On November 21, 2006, the Family Judge entered an order rejecting Dr. Soulsby's creative argument, holding that, "the allegations contained in the Motion are incorrect and . . . the Court's calculations of child support as set forth in its Order are correct."¹⁴

On December 7, 2006, Dr. Soulsby appealed both the November 8 and 11, 2006, orders.¹⁵ The grounds for appeal were threefold, but only one of which Dr. Soulsby ultimately pursued to this Court.¹⁶

On January 16, 2007, the Circuit Court of Putnam County entered an order affirming the Family Court's orders.¹⁷ With respect to the child support issue, the Court held as follows:

The first calculation, for daughter Kari, came from the 'worksheet for calculating basic child support obligation in basic shared parenting cases' provided by W. Va. Code § 48-13-403. The second calculation, for their son Devin, came from the 'extended shared parenting worksheet' provided by W. Va. Code § 48-13-503. . . .

¹³*Id.*

¹⁴Ex. D.

¹⁵Ex. E.

¹⁶*Id.*

¹⁷Ex. F.

West Virginia Code § 48-13-203 (2006) instructs that “[t]he amount of support resulting from the application of the [child support] guidelines is presumed to be the correct amount, unless the court, in a written finding or a specific finding on the record, disregards the guidelines or adjusts the award as provided for in section 13-702.” Section 13-702 recognizes that *if* a Family Court finds the guidelines inappropriate it *may* disregard or adjust the guidelines. . . .

The Petitioner has failed to cite any law, authority, or findings which show that the Family Court committed any errors of law.

In other words, Judge Spaulding recognized that Family Courts have flexibility in applying the child support guidelines to adjust for the circumstances of individual cases. Here, Kari chooses to spend no time with Dr. Soulsby, but he still gets credit in the formula (thirty-five percent) as if she did. Moreover, Dr. Soulsby earns about \$420,000.00 a year and can well afford to pay monthly child support of \$5,570.00, which is but a small fraction of his income. Finally, the Family Judge did other things, e.g., attributing income to Ms. Martinez even though she is not employed, and took such adjustments into account in applying the child support formulas

Because the goal of the child support statutes is to provide adequate and appropriate support for children, Ms. Martinez submits that the Family Court and the Circuit Court were correct in its analysis and therefore, the judgment of the Circuit Court of Putnam County should be affirmed.

III. DISCUSSION OF LAW

A. STANDARD OF REVIEW

In Syllabus Point 1 of *Arneault v. Arneault*,¹⁸ this Court recently reiterated:

“In reviewing a final order entered by a circuit judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law de novo.” Syllabus, *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004).” Syllabus point 1, *Staton v. Staton*, 218 W. Va. 201, 624 S.E.2d 548 (2005).

This was the standard of review properly applied by the Circuit Court and, for the reasons set forth in its order, its judgment should be affirmed.

B. WHERE THE CHILD SUPPORT STATUTE IS “AMBIGUOUS,” AS THE APPELLANT CONTENDS, IT SHOULD BE CONSTRUED IN FAVOR OF CHILDREN AND NOT IN FAVOR OF CHILD SUPPORT OBLIGORS.

W. Va. Code § 48-1-239(b) provides, “‘Basic shared parenting’ means an arrangement under which one parent keeps a child or children overnight for less than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.” There is no dispute that Kari spends none of her time with Dr. Soulsby. W. Va. Code § 48-13-403 provides, “Child support for basic shared parenting cases shall be calculated using the following

¹⁸219 W. Va. 628, 639 S.E.2d 720 (2006).

worksheet.” There is no dispute that the Family Judge used the “basic shared parenting” worksheet for Kari.

W. Va. Code § 48-1-239(c) provides, “‘Extended shared parenting’ means an arrangement under which each parent keeps a child or children overnight for more than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.” W. Va. Code § 48-13-503 provides, “Child support for extended shared parenting cases shall be calculated using the following worksheet:” There is no dispute that the Family Judge used the “extended shared parenting” worksheet for Devin.

As noted by the Circuit Court, W. Va. Code § 48-13-101 provides:

This article establishes guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There is a rebuttable presumption, in any proceeding before a court for the award of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded.¹⁹

¹⁹See also W. Va. Code § 48-13-203 (“The amount of support resulting from the application of the guidelines is presumed to be the correct amount, unless the court, in a written finding or a specific finding on the record, disregards the guidelines or adjusts the award as provided for in section 13-702.”).

Again, there is no dispute that the Family Court used the guidelines. Dr. Soulsby only differs in the manner in which they were used. Thus, Dr. Soulsby has not rebutted the presumed correctness of its child support order.

The flaws in Dr. Soulsby's reasoning can be seen from these excerpts from his brief:

[T]he West Virginia Child Support guidelines do not specifically address the situation where one parent has primary caretaking responsibility for one child, while both parents have extended shared parenting for their other child.²⁰

Thus, Dr. Soulsby admits that what he advocates can be found nowhere in the statute. What he is urging this Court to do is to fill in the interstices of the statute by adopting a rule that will hurt children, a result entirely inconsistent with the purpose of the statute:

In this case, the Family Court utilized two separate worksheets for one case. Thus, an ambiguity is apparent. . . It is evident that interpretation of the Child Support statute is required because of an ambiguity.²¹

Dr. Soulsby then proceeds to argue that this "ambiguity" should be construed not in favor of children whose lives have already been torn asunder by divorce, but in favor of support obligators, including those, like Dr. Soulsby, who earn \$35,000 per month:

The Family Court failed to take into account in its child support calculation that the West Virginia child support guidelines recognize, and the legislature clearly intended that

²⁰Brief of Appellant at 8 (emphasis supplied).

²¹Brief of Appellant at 8 (emphasis supplied).

when calculating support for two children, the amount for adding a second child is substantially less than the first child. This is evident by a simple review of the child support income table. As an example, under W. Va. Code § 48-13-301, the child support obligation for a child whose parents' monthly income is \$550.00 is \$127.00, while the child support obligation for two children is \$185.00. It is clear that the obligation does not double when there is more than one child, but rather it increases incrementally.²²

Certainly, Ms. Martinez does not dispute that the Legislature could have directed that when "basic shared parenting" applies to one child and "extended shared parenting" applies to another, Family Judges are to "average" two worksheets as sort of a "multi-child discount" advocated by Dr. Soulsby. As even Dr. Soulsby concedes, however, there is no express language of the child support statute requiring Family Judge to average the figures generated by Kari's worksheet and Devin's worksheet.

To the contrary, where a statute is "ambiguous," to use Dr. Soulsby's terminology, it is to be construed in favor of its beneficial purposes and it is beyond cavil that child support statutes have been enacted not for the benefit of the child support obligors, but for the benefit of children. Indeed, this Court has consistently construed "ambiguous" provisions of a myriad of statutes in favor of the intended beneficiaries of those statutes.

For example, in construing an ambiguous tax statute, this Court noted, "The taxpayer begins with the customary rule that tax statutes are strictly construed, and when there is some ambiguity regarding meaning of such laws they should be liberally construed

²²Brief of Appellant at 7 (emphasis supplied).

in the taxpayer's favor."²³ In construing an ambiguous criminal statute, this Court held, "there is every reason for us to invoke the time-honored maxim that criminal laws will always be construed most strongly in favor of the defendant and the corollary that any ambiguity in a criminal statute must be resolved in favor of the defendant and against the state."²⁴ Indeed, this Court has repeatedly used the "liberality rule" to construe statutes in favor of those persons a particular statute was designed to protect.²⁵

²³*Koppers Co., Inc. v. Dailey*, 167 W. Va. 521, 523, 280 S.E.2d 248, 250 (1981).

²⁴*United States v. Dobkin*, 188 W. Va. 209, 213, 423 S.E.2d 612, 616 (1992).

²⁵See *Katherine B.T. v. Jackson*, 220 W. Va. 219, 227, 640 S.E.2d 569, 577 (2006) ("We believe a domestic violence proceeding under W. Va. Code, 48-27-101, et. seq., is a remedial statute designed for the protection of the persons as defined in the statute and is to be liberally construed to accomplish its purposes."); *Adkins v. Gatson*, 218 W. Va. 332, 336, 624 S.E.2d 769, 773 (2005) ("Our review of this matter is also guided by our consistent recognition that '[u]nemployment compensation statutes, being remedial in nature, should be liberally construed to achieve the benign purposes intended to the full extent thereof.' Syl. pt. 6, *Davis v. Hix*, 140 W. Va. 398, 84 S.E.2d 404 (1954)."); *Tillis v. Wright*, 217 W. Va. 722, 729, 619 S.E.2d 235, 242 (2005) ("Statutes relating to vacancies on an election ballot ordinarily should be liberally construed in order to serve the legislative policy of providing a full selection of candidates for the voters." Syl. pt. 1, *State ex rel. Cravotta v. Hechler*, 187 W. Va. 790, 421 S.E.2d 698 (1992)."); *Board of Trustees v. Davis*, 215 W. Va. 539, 543, 600 S.E.2d 251, 255 (2004) ("we have consistently held that 'statutes creating a pension and relief fund for municipal employees should receive a liberal construction.' *Cawley v. Board of Trustees of Firemen's Pension or Relief Fund of City of Beckley*, 138 W. Va. 571, 578, 76 S.E.2d 683, 687 (1953). The reasoning underlying this rule of statutory construction is that the 'primary purpose of statutes providing for police and firemen's pensions is to protect the employee and his or her family.' Syllabus Point 3, *Board of Trustees of Firemen's Pension and Relief Fund v. City of Fairmont*, 215 W. Va. 366, 599 S.E.2d 789 (2004)."); *Shaffer v. Fort Henry Surgical Associates, Inc.*, 215 W. Va. 453, 458, 599 S.E.2d 876, 881 (2004) ("'[s]tatutes, such as the [Wage Payment and Collection Act], that are designed for remedial purposes are generally construed liberally to benefit the intended recipients.' *Conrad v. Charles Town Races, Inc.*, 206 W. Va. 45, 51, 521 S.E.2d 537, 543 (1998) (citations omitted)."); *McDavid v. United States*, 213 W. Va. 592, 596, 584 S.E.2d 226, 230 (2003) ("The wrongful death act is a remedial statutory scheme. Accordingly, as we stated in Syllabus Point 6 of *Bradshaw v. Soulsby*, 210 W. Va. 682, 558 S.E.2d 681 (2001), 'Because the wrongful death

Are the domestic violence, unemployment compensation, workers' compensation, wage payment and collection, election, taxation, public pension, wrongful death, governmental information, and other remedial statutes to be liberally construed to effectuate their beneficial purposes, but the child support statute is not to be so construed? Of course, there is no justification for such result. Indeed, in *Prather v. Prather*,²⁶ this Court stated, "We have consistently given a liberal interpretation to our statute authorizing temporary alimony and child support."²⁷

act alleviates the harshness of the common law, it is to be given a liberal construction to achieve its beneficent purposes.'"); Syl. pt. 9, *Marcus v. Holley*, 217 W. Va. 508, 618 S.E.2d 517 (2005)("The Workmen's Compensation Law is remedial in its nature, and must be given a liberal construction to accomplish the purpose intended.' Syl. Pt. 3, *McVey v. Chesapeake & Potomac Tel. Co.*, 103 W. Va. 519, 138 S.E. 97 (1927)."); Syl. pt. 4, *Farley v. Worley*, 215 W. Va. 412, 599 S.E.2d 835 (2004)("The disclosure provisions of this State's Freedom of Information Act, W. Va. Code, 29B-1-1 et seq., as amended, are to be liberally construed, and the exemptions to such Act are to be strictly construed. W. Va. Code, 29B-1-1 [1977].' Syllabus point 4, *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985).").

²⁶172 W. Va. 348, 353, 305 S.E.2d 304, 310 (1983).

²⁷Other courts apply the liberality rule with respect to child support statutes. *See, e.g., State ex rel. Dept. of Economic Security v. Demetz*, 212 Ariz. 287, 290, 130 P.3d 986, 989 (Ariz. Ct. App. 2006)("we consider the role served by § 25-503(M) in our child support statutes and liberally construe that provision to effect its goal.")(citation omitted); *Eccleston v. Bankosky*, 438 Mass. 428, 437, 780 N.E.2d 1266, 1274 (Mass. 2003)("we act to close an unintended gap in the comprehensive legislative scheme providing post minority support to children of disrupted families that is consistent with the Legislature's directive to construe child support statutes 'liberally' to secure the welfare of children"); *Chambers v. Chambers*, 2002 WL 1940145 *4 (Del. Fam. Ct.)("Moreover, 'it is usual to interpret [child support statutes] liberally to support the welfare of the child'.")(footnote omitted); *Kiken v. Kiken*, 149 N.J. 441, 450-51, 694 A.2d 557, 561 (1997)("Moreover, when construing N.J.S.A. 2A:34-23, we have done so 'liberally to the end that, where the circumstances equitably call for such action, the court may enter a support order for minor children to survive their father's death.' *Grotzky, supra*, 58 N.J. at 361, 277 A.2d 535; *see also Jacobitti, supra*, 135 N.J. at 575, 641 A.2d 535 (noting that '[c]ourts are to apply the "comprehensive" terms of N.J.S.A. 2A:34-23 liberally and equitably')."). Indeed, with respect

The child support statute itself states:

It is one of the purposes of the Legislature in enacting this chapter to improve and facilitate support enforcement efforts in this state, with the primary goal being to establish and enforce reasonable child support orders and thereby improve opportunities for children. It is the intent of the Legislature that to the extent practicable, the laws of this state should encourage and require a child's parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.²⁸

Moreover, the Legislature has stated:

The Legislature recognizes that children have a right to share in their natural parents' level of living. Expenditures in families are not made in accordance with subsistence level standards, but are made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents' resources, regardless of family structure, these guidelines are structured so as to provide that after a consideration of respective parental incomes, child support will be related, to the extent practicable, to the standard of living that children would enjoy if they were living in a household with both parents present.²⁹

Finally, in concurring in *Robinson v. Coppola*,³⁰ Justice Starcher observed:

to child support statutes, it has been observed, "It is usual to interpret these statutes liberally to support the welfare of the child." 3A SUTHERLAND STATUTORY CONSTRUCTION (6th ed) § 69:9 (2007)(footnote omitted).

²⁸W. Va. Code § 48-11-101(a) (emphasis supplied).

²⁹W. Va. Code § 48-13-102 (emphasis supplied).

³⁰212 W. Va. 632, 639, 575 S.E.2d 242, 249 (2002)(Starcher, J., concurring).

[T]he child support ordered must be “related, to the extent practicable, to the standard of living that children would enjoy if they were living in a household with both parents present.” W. Va. Code, 48-13-102 [2001]. “[A] family . . . court should examine what a reasonable, similarly-situated parent would have done had the family remained intact or, in cases involving a nonmarital birth, what the parent would have done had a household been formed.” *Porter v. Bego*, 200 W. Va. 168, 176, 488 S.E.2d 443, 451 (1997). In other words, family courts have flexibility to craft remedies that reflect the pre- and post-divorce circumstances of the parties, so that the final child support order ensures that the children can share in both parents’ standard of living.³¹

Obviously, with monthly income of about \$35,000.00, Dr. Soulsby can more than afford about \$5,500.00 in financial support for his two children, including Kari, a sixteen-year-old, who should not be punished for exercising her right not to visit with her father.

Although, as Dr. Soulsby argues, there is some ambiguity in the child support worksheet statute, Ms. Martinez submits that liberally construing such statute in favor of children supports the Family Court’s decision in this case:

The calculation of the amount awarded by the support order requires the use of one of two worksheets which must be completed for each case. Worksheet A is used for a basic shared parenting arrangement. Worksheet B is used for an extended shared parenting arrangement.³²

³¹See also *Kirwan v. Kirwan*, 212 W. Va. 520, 523, 575 S.E.2d 130, 133 (2002) (“West Virginia Code § 48-13-102 (2001) (Repl. Vol. 2001) . . . clearly states that public policy dictates that children share in the standard of living of their parents regardless of the marital status of the parents.”).

³²W. Va. Code § 48-13-204 (emphasis supplied).

A liberal construction of the term “case,” which is undefined in the statute, would mean “child” where one child is subject to a “basic shared parenting arrangement” and another child is subject to “an extended shared parenting arrangement.” This liberal construction is further supported by the extensive number of statutory provisions differentiating the calculation of child support in “basic shared parenting”³³ arrangements and in “extended shared parenting”³⁴ arrangements. The Legislature has even provided for a different tax treatment in “extended shared parenting” situations.³⁵

Accordingly, this Court should reject Dr. Soulsby’s invitation to read into the child custody statute an “averaging” scheme not adopted by the Legislature merely because it would result in lowering his financial obligation to his children. In *Worley v. Beckley Mechanical, Inc.*,³⁶ this Court recently observed:

³³See W. Va. Code § 48-1-239; W. Va. Code § 48-12-102; W. Va. Code § 48-13-204; W. Va. Code § 48-13-401; W. Va. Code § 48-13-402; W. Va. Code § 48-13-403; W. Va. Code § 48-13-404.

³⁴See W. Va. Code § 48-1-239; W. Va. Code § 48-12-102; W. Va. Code § 48-13-204; W. Va. Code § 48-13-501; W. Va. Code § 48-13-502.

³⁵W. Va. Code § 48-13-801 (“Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent’s income and child support is greater when the exemption is awarded to the payor parent.”).

³⁶220 W. Va. 633, 643, 648 S.E.2d 620, 630 (2007).

When specific statutory language produces a result argued to be unforeseen by the Legislature, “the remedy lies with the Legislature, whose action produced it, and not with the courts. The question of dealing with the situation in a more satisfactory or desirable manner is a matter of policy which calls for legislative, not judicial, action.” *Verizon West Virginia, Inc. v. West Virginia Bureau of Employment Programs, Workers’ Compensation Division*, 214 W. Va. 95, 114, 586 S.E.2d 170, 189 (2003), quoting *Hereford v. Meek*, 132 W. Va. 373, 388, 52 S.E.2d 740, 748 (1949).³⁷

If Dr. Soulsby wants an adjustment of the legislative worksheets when a couple’s children are subject to varying visitation schedules, his recourse is with the Legislature, not with this Court.

IV. CONCLUSION

To accept Dr. Soulsby’s “multi-child discount” argument for “averaging” multiple worksheets where children subject to different visitation schedules are involved would engraft onto the statute a remedy not provided by the Legislature. If the child support statute is “ambiguous,” as argued by Dr. Soulsby, it should be construed in favor of children, its intended beneficiaries, not child support obligors, and Dr. Soulsby’s remedy, if any, lies with the Legislature, not with this Court.³⁸

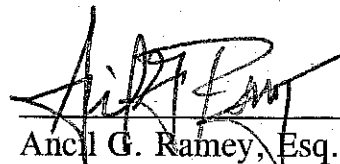
³⁷See also *Verizon West Virginia, Inc. v. Bureau of Employment Programs*, 214 W. Va. 95, 114, 586 S.E.2d 170, 189 (2003).

³⁸Alternatively, if this Court remands for recalculation of the Appellant’s child support obligation, the Appellee requests that the Family Court be permitted to make such other adjustments as it may deem appropriate in light of such recalculation.

WHEREFORE, the Appellant, Dawn Valerie (Soulsby) Martinez, respectfully requests that the judgment of the Circuit Court of Putnam County be affirmed.

**DAWN VALERIE (SOULSBY)
MARTINEZ**

By Counsel

A handwritten signature in black ink, appearing to read "Ancil G. Ramey", is written over a horizontal line.

Ancil G. Ramey, Esq.

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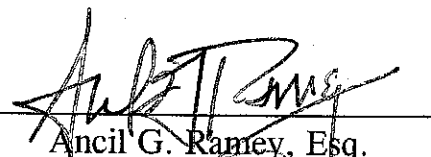
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CERTIFICATE OF SERVICE

I, Ancil G. Ramey, Esq., do hereby certify that on January 16, 2008, I served the foregoing "BRIEF OF THE APPELLEE" upon counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

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